STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 29, 2009
v	No. 286822 Wayne Circuit Court
CHRISTOPHER DARYL ASLINGER, Defendant-Appellant.	LC No. 08-000022-FH

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2), and receiving and concealing stolen property, MCL 750.535. He was sentenced to concurrent prison terms of 78 months to 20 years for the home invasion conviction and three to five years for the conviction of receiving and concealing stolen property. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted under an aiding and abetting theory. On appeal, he challenges the sufficiency of the evidence supporting his conviction of first-degree home invasion. He claims that there was no evidence that he intended the commission of the crime, or that he knew that the principal intended to commit a home invasion. To a lesser degree, defendant also argues that there was a lack of evidence showing that he performed acts or gave encouragement that assisted in the commission of the crime.

At approximately 2:30 to 3:00 a.m. on December 12, 2007, the principal offender broke down the door of the complainant's home, entered, and approached the bedroom where she and her boyfriend had been sleeping. The principal offender stated that he was looking for or was there to kill "Eddie," the nickname used by the complainant's boyfriend. She denied knowing whom the man was talking about and demanded that he leave. When he went toward the door of her daughter's bedroom, she "went ballistic," grabbed him, and pushed him. He left the home, repeatedly screaming "Go" to the driver of a cargo van, which had been stolen from its owner the previous day. The van was running and was parked on the street in front of the home, on the same side of the street as the house, facing the wrong direction. The principal entered on the passenger side. The van began moving before the door was closed as the complainant attempted to see the license plate number. The complainant's home was on a dead-end street, and the van proceeded in the direction of the terminal end. She saw the van hit a fence and move as though out of control, and then it appeared to be stuck. She did not see the driver. The police officers

later brought defendant to her, but she did not recognize him and testified that he was not the man who entered her home. The complainant's boyfriend agreed that the man who broke into the home was not defendant.

The police saw defendant running near where the vehicle crashed and apprehended him. Defendant told Sergeant Conrad that "Joe" had picked him up at approximately 1:00 a.m. and asked if he wanted to go purchase some crack cocaine. Sergeant Conrad did not recall whether defendant said that they purchased the crack cocaine or not. Defendant said that they drove to the house of a female in Dearborn whom Joe said he knew. Joe got out and approached the door. Defendant said that he saw Joe kick the front door, enter, and yell. A few moments later, Joe ran to the van and then drove at a high rate of speed, but the van crashed at a dead-end. Defendant and Joe initially fled in the same direction but then separated. Defendant said that he did not know who owned the van, and Joe had driven the whole time.

Defendant also gave a verbal statement to Corporal Ball. Defendant stated that, at 1:00 a.m., a white van approached him, and the driver (Joe), whom defendant had never seen before, asked if he knew where to get crack. Defendant said that he did, and the two went together to buy crack, which they smoked as they drove around. Joe wanted more, but they did not have any money. Joe said that they were going to his girlfriend's home so he could get money from her. Joe drove to the complainant's home. Defendant said that he stayed in the passenger seat as Joe went to the door. When no one answered, defendant saw Joe kick the door and go into the house. Joe came back out, got into the driver's seat, and drove northbound. Once they saw that it was a dead end street, Joe stopped and then decided to keep going forward. Defendant felt like the van was going to hit a tree so he grabbed the steering wheel and pulled to the right, causing the van to go off the side of the road and crash into a fence. Defendant said that the van was stuck in the grass. The two men got out and fled, but defendant was not able to run because he was still suffering from a past gunshot wound.

According to Sergeant Beggs, after the arraignment, defendant said that he wanted to talk. He said that he knew the name of "the guy and I know about the van being stolen." He asked for a promise or guarantee in exchange for talking, but Beggs said that he could only pass along the information to the prosecutor. Defendant said that the other man had a violent criminal history, and defendant was concerned for his safety and that of his family.

We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). "[B]ecause it can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be

inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

"Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense." MCL 767.39. The elements necessary to support a conviction for aiding and abetting are: "'(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement.'" *Carines, supra* at 768 (citation omitted).

Viewing the evidence in the light most favorable to the prosecution, one can reasonably infer that defendant knew of the principal's plan and agreed to assist by driving the getaway vehicle. From the complainant's testimony, when considered in conjunction with defendant's statements to police, one can conclude that defendant was the driver of the stolen cargo van and that the vehicle was parked on the wrong side of the street and left running, while the principal was inside in the home, in order to facilitate a quick departure. Having seen the principal forcibly enter the home, which observation defendant acknowledged to police, defendant *waited for him to return* and began driving the van away even before the door was closed. One can reasonably infer from the principal's reliance on the van driven by defendant to provide the escape and yelling at him to go that the principal anticipated defendant's cooperation in the plan. The circumstances, facts, and reasonable inferences arising therefrom provided sufficient evidence for a rational juror to find, beyond a reasonable doubt, that the requisite intent, either defendant's intent or defendant's knowledge of the principal's intent, was proven. There was also sufficient evidence establishing that defendant performed acts or gave encouragement that assisted in the commission of the crime.

Defendant also contends that the prosecutor committed misconduct during closing arguments. On rebuttal, the prosecutor rhetorically asked the jury, "[W]hy would those officers lie?" and then stated, "Those officers have no reason to lie to try to put anything on him to risk their careers to try to put a case on him, and if they were going to put a case on him, really, couldn't they have done a better job, this wouldn't be the best case." According to defendant, the argument was improper because it urged the jury to convict him not based on the objective evidence "but on something uniquely within the prosecution's knowledge."

Because defendant did not object to the remarks now challenged on appeal, we review under the plain error test. *Carines, supra* at 763-764. Defendant must establish that an error occurred, that it was plain (i.e., clear or obvious), and that the error affected his substantial rights, which generally requires a showing that it affected the outcome of the trial court proceedings. *Id.* at 763. If these requirements are satisfied, this Court must exercise discretion in deciding whether to reverse. "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id.* (internal quotation marks and alteration omitted.)

A "prosecutor cannot vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness' truthfulness." *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). In *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004), this Court, addressing a similar issue, held:

> Considered in context, the prosecutor was not implying that he had some special knowledge of the truthfulness of the police officer. In fact, the prosecutor made no comments at all about his personal knowledge or belief regarding the truthfulness of the police witnesses; he merely argued that the officers had no reason to lie. The prosecutor argued that lying on the stand would cost the officer his career and his position with the Executive Protection Unit. His comments emphasizing that the police utilized proper procedures to obtain a valid search warrant were also responsive to defendant's argument that he was the victim of a police conspiracy. Considered in context, and given their responsive nature, the prosecutor's comments were not improper. Furthermore, any prejudice caused by the remarks could have been alleviated by a curative instruction given on a timely objection. [Citations omitted.]

Here, as in *Thomas*, the prosecutor was not implying that he had some special knowledge of the truthfulness of the police officers. Furthermore, during closing argument, defense counsel attacked the fact that the prosecutor was relying on alleged verbal statements made by defendant to police, "versus a written signed statement versus a recorded statement versus a video statement." Defense counsel informed the jury that "[t]he judge is going to instruct you [that] you can't just accept a statement because the Dearborn police said so." Although no express accusation of deceit was made by defense counsel, it was certainly implicit in the argument. In direct response to counsel's suggestion of impropriety, the prosecutor, on rebuttal, made the statements now challenged. Given the context, and considering their responsive nature, the prosecutor's comments were not improper. Additionally, any prejudice caused by the prosecutor's remarks could have been alleviated by a curative instruction given on a timely objection. Finally, in light of *Thomas*, we see no need to address the nonbinding federal caselaw cited by defendant, which does not include any relevant precedent from the United States Supreme Court. And even assuming error, defendant has not shown that it affected the outcome of the proceedings, nor that the presumed error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of the proceedings independent of defendant's innocence.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Jane M. Beckering